

The Gazette



of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY

NEW DELHI, FRIDAY, FEBRUARY 25, 1949

GOVERNMENT OF INDIA

MINISTRY OF LABOUR.

NOTIFICATION

New Delhi, the 25th February, 1949

No. L.R.-2(162).—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the Bengal Provincial Railway Company, Limited, Magra, District Hooghly and their workmen:—

Reference No. 2 of 1948

CENTRAL GOVERNMENT'S INDUSTRIAL TRIBUNAL, CALCUTTA:

IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN THE BENGAL PROVINCIAL RAILWAY COMPANY, LIMITED, MAGRA, DISTRICT HOOGHLY, AND THEIR WORKMEN.

Present	...	Sri S. P. Vanna, Barrister, Chairman, Central Industrial Tribunal, Calcutta.
For the Railway	...	Sri K. K. Basu, Sri Sankar Mitra, Sri N. Das Gupta, Sri H. N. Roy, Manager and Engineer-in-Chief.
For the Union	...	Sri H. K. Sanyal, Sri B. Majumder, President, B. P. Railway Employees' Union.

AWARD

By an order No. L.R.2(162), dated 24th August, 1948 the present industrial dispute between the Bengal Provincial Railway Company Limited, Magra, District Hooghly and their workmen was referred to this Tribunal under Section 10(1)(c) of the Industrial Disputes Act with the following Schedule consisting of 12 Issues:

SCHEDULE

- (1) *Recognition of the Union.*—The Bengal Provincial Railway Employees' Union being formed under the Indian Trade Unions Act, 1926, the Management should give immediate recognition to this Union.

- (2) *Fixation of a Minimum Basic Pay.*—The minimum basic pay of the clerks and the workers should be fixed in accordance with the Central Pay Commission's recommendations.
- (3) *Dearness Allowance.*—The cost of living having increased abnormally, the employees should be paid a flat rate of Dearness Allowance amounting to Rs. 30 per month.
- (4) *Bonus.*—Annual Bonus amounting to two months' pay should be granted to each employee just before the Durga Puja.
- (5) *House Allowance.*—The Management should provide every employee with residential quarters and where no such quarters are made available to them, a monthly allowance of Rs. 5 should be granted.
- (6) *Provident Fund.*—Provident Fund scheme similar to the East Indian Railway should immediately be introduced with retrospective effect.
- (7) *Gratuity.*—Every employee should be paid at the time of retirement a gratuity equal to one month's pay for every year of service.
- (8) *Scales of Pay.*—Scales of pay for all employees, approved by the Union, should be introduced and the present position on the scale should be determined after full consideration of the service and age of the employee.
- (9) *Duty-Hours and Overtime Allowance.*—Duty hours of an employee, in the ordinary course, should not exceed 48 hours a week, and when employed more than 48 hours, should be granted an allowance equal to double the ordinary rate of pay.
- (10) *Costumes to the Employees.*—Every employee should be provided with costumes to put on during duty hours.
- (11) *Service Conditions.*—Better service conditions and security of service should be assured to all employees.
- (12) *Running Room.*—Running room for rest should be made available to the drivers and guards.

History of the Dispute.—The Bengal Provincial Railway Company Limited was formed in 1890. Previously it was known as "Tarakeswar Magra Steam Tramway" which was opened in 1895. This railway covers a distance of about 41½ miles including a branch line which covers a distance of about 6 miles which is a guaranteed railway in which a dividend must be paid at a certain percentage. The Nominal Capital of the Company was 11 lakhs and the Paid up Capital 8 lakhs and 48 thousand. The dividend paid for 1946 for the Main Line was 1½ per cent. In earlier years it used to be more. The bulk of the railway is situated in the district of Hooghly.

Near about the beginning of October 1947, the workmen formed themselves into a Union in the name of the "Bengal Provincial Railway Employees Union" and on the 6th October 1947, the said Union sent to the Company a Charter of Demands of the employees, which forms a part of their statement before this Tribunal as Annexure 'A'. The Union claims to represent the bulk of the working men under the Company. On the 5th November 1947, the Union served upon the Company a notice for strike intimating that if the demands of the workers were not fulfilled they would go on strike from the midnight of 23rd/24th of November 1947. The matter was taken up by the Regional Labour Commissioner (Central), Calcutta and the strike was postponed. On

the intervention of the Regional Labour Commissioner (Central), the Management gave some increments in their pay. Thinking the increments were inadequate, the Regional Labour Commissioner (Central) made certain suggestions which would be referred to later on; but the Company having failed to accept the suggestions, the matter was referred to the Central Government for the appointment of a Tribunal and that is how this matter came up before this Tribunal.

So far as Issues.

- (1) *Recognition of the Union.*—The Bengal Provincial Railway Employees' Union being informed under the Indian Trade Unions Act, 1926, the Management should give immediate recognition to this Union.
- (9) *Duty-Hours and Overtime Allowance.*—Duty hours of an employee, in the ordinary course, should not exceed 48 hours a week, and when employed more than 48 hours, should be granted an allowance equal to double the ordinary rate of pay.
- (10) *Costumes to the Employees.*—Every employee should be provided with costumes to put on during duty hours.

AND

- (11) *Service Conditions.*—Better service conditions and security of service should be assured to all employees.

are concerned, I am glad to note that the parties have agreed and they have put in an application which is marked Appendix 'A' of this award. As there is no legal defect in the terms of the compromise and the parties understand the terms of the compromise, it is recorded and the award on these issues is made in the terms of the petition for compromise. It will be noticed that only a part of the Issue No. 9 has been agreed upon. For overtime work there is no agreement. For that I would award a double rate of pay to workers who are employed for more than 48 hours a week.

ISSUE No. 2.—*Fixation of a Minimum Basic Pay.*—The minimum basic pay of the clerks and the workers should be fixed in accordance with the Central Pay Commission's recommendations;

ISSUE No. 8.—*Dearness Allowance.*—The cost of living having increased abnormally, the employees should be paid a flat rate of Dearness Allowance amounting to Rs. 30 per month;

AND

ISSUE No. 8.—*Scales of Pay.*—Scales of pay for all employees, approved by the Union, should be introduced and the present position on the scale should be determined after full consideration of the service and age of the employee.

These three Issues are taken together

The Union demands that the minimum basic pay of the clerks and the workers should be fixed in accordance with the Pay Commission's Report published by the Central Government. In their statement before this Tribunal they also gave a list of different categories of workmen and the respective pays that they were drawing. The Railway, however, gave different figures in reply and their figures were admitted to be correct by the Union in course of their argument. These figures I shall give in the course of the discussion. The case

of the Railway is that they are running at a loss and that they cannot afford to pay any increment to the staff. A general increment was given to the staff in September 1947. They say that are willing to give further increments provided they get the loan which they have asked for from the Central Government.

In the course of argument it was argued on behalf of the Union that the proper scrutiny of the Balance Sheets of the different years was necessary to see if the statement of the Railway was correct. There were also allegations against the Railway of having made some secret profits. They also said that certain properties belonging to the Railway were settled with the people without holding a public auction and in some cases goods were carried without showing that any freight was charged thereon. On behalf of the Railway it was pointed out that the fact that there were restrictions about bookings were brought to the knowledge of the Company only on the 10th September, 1948. So far as settlement of tanks and other properties belonging to the Railway was concerned it was said by the Railway that these properties were settled with their employees because it was one of the ways of helping the employees whose pays were rather low. With regard to carrying of goods without charges, the instance that was cited by the Union was explained by showing that the bill was submitted on the 8th November, 1948, and payment was made on the 29th November, 1948. These instances to my mind do not establish clearly that any secret profit was made. I have looked at the Balance Sheets of several years and went through them with the assistance of the Railway Accountant. I have also got a comparative table of the gross income, gross expenditure and Profit and Loss of the Railway for several years. I need not mention the figures of other years, but it appears that in the year 1945-46 the Railway made a profit of Rs. 30,665, in 1946-47 the Railway made a profit of Rs. 8,405 but in 1947-48, the income was Rs. 1,85,119 and the gross expenditure was Rs. 2,16,859 with the result that they incurred a loss of Rs. 31,740 in that year. This includes depreciation also.

Judging from the attitude of the Railway, it seems that they are not unwilling to meet the workers demand but they say that they are not in a position to give them any enhanced remuneration beyond that which they gave in September 1947. Looking at the rate of payment to the employees of the Railway, which will be apparent from the table given below, there is no doubt that the rate is according to present standards lamentably low. So, what we have to see is as to what can be done under the circumstances. There is the Pay Commission's Report upon which the Union bases its claim. On the other hand there is the plea of the Railway that they are not in a position to pay. No serious defect has been pointed out to me nor have I been able to discover any in the Balance Sheet of the Railway and there is no doubt on the figures mentioned therein that the financial condition of the Railway is anything but satisfactory. When the case was before the Regional Labour Commissioner (Central), Calcutta, he made the following recommendations to the Chairman of the Railway:—

- “(1) Salaries of employees getting below Rs. 25 per month should be raised to the latter amount.
- (2) Salaries of employees getting more than Rs. 25 but less than Rs. 30 should be raised up to the latter amount.
- (3) The recent increment granted at various amounts should be done at a flat rate of Rs. 10 to all.
- (4) The four discharged employees who have not been given their increment should be paid the same with retrospective effect.

- (5) In order to ensure better relationship between the Administration and the employees, the employees union should be formally recognised.
- (6) System of written service condition for the employees as obtaining on State and other Railways should be introduced as early as possible."

The Railway, however, did not see its way to agree to the first three proposals although they were prepared to accept the last three. This was made clear in the letter, dated 8rd February, 1948. Whether the Union would have been satisfied or not by the Railway accepting all the six proposals, it is difficult to say. But it is clear that even this demand in the first three recommendations of the Regional Labour Commissioner (Central) were not acceptable to the Railway chiefly on the ground of their financial condition.

The question then arises as to what is to be done under the circumstances. On the one hand there is a view that industrial concerns who cannot pay proper wages to their employees have no right to exist. I gather this from the following passage in the Award in the dispute between "The Workmen employed in the Mica Mines situated in the Province of Bihar and their employers". (Central Government Industrial Tribunal at Dhanbad Reference No. 2 of 1948):—

"The Workmen must first be given a reasonable minimum wage; and it has been said by Authority that an industry which is unable to pay a reasonable minimum wage has no right to exist. The Workmen are entitled, in addition to minimum wage to reasonable advances consistent with the industry's ability to bear it; and this subject must be approached with an appreciation of the background of the industry, its present day condition, and its reasonable expectations of the future."

On the other hand, I find the following passage in the award in the dispute between Management of Kesharimull Kundalmull, 46 Strand Road, Calcutta and their Workmen, published in the Calcutta Gazette Extraordinary, dated 28th October, 1948 (P. 1095):—

"Dr. Gadgil once remarked 'Financial consideration and general economy of the industry are two of the most important factors which cannot be overlooked in deciding what emoluments are to be paid to the workers'. It may often lead to destruction of the industry altogether leading to unemployment if these considerations are overlooked and a living wage according to theoretical definition be thrust upon an industry."

I have come across various awards from West Bengal in which the capacity of the employers to pay has been taken into consideration. I need not multiply instances but I will content myself by referring to Order No. 3798Lab, dated 23rd October 1948—Between Calcutta Steam Navigation Company Ltd. and their Workmen—and the award from which I have quoted above. These two views appear to be contrary to one another but perhaps the former view represents the ideal which should be kept in view in dealing with an industrial dispute whereas the latter deals with conditions actually existing in an industry.

Giving my best consideration to the question, I feel that the pay of the workers should be increased as mentioned below:—

Categories	Existing :		Proposed
	Minimum	Maximum	
1. Clerk	Rs. 25/-	Rs. 36/-	Rs. 40—2—60
2. Peon	18/-	25/-	25—1—30
3. Guard	25/-	35/*	35—2—55
	(Plus mileage allowance @ As. -/8/- per 100 miles)		(With the usual allowances on mileage)
4. T.T.I.	20/-	35/-	30—1—45
	(Plus 25% commission and mileage allowance @ As. -/8/- per 100 miles)		(With the usual commission and allowance.)
5. Station Master .	21/-	40/-	35—2—55
6. Pointsman . . .	17/-	23/-	30—1—35
7. Porter	15/-	20/-	25—1—30
8. Booking Clerk .	23/-	27/-	30—1—40
9. Sweeper	12/-	15/-	25—1—30
10. Skilled Workmen	30/-	125/-	40—5—125
11. Semi-skilled workmen	25/-	35/-	30—1—35
12. Unskilled workmen	15/-	30/-	25—1—30
13. Driver	25—1—30	31—1—35	30—1—40 and 40—1—50

Dearness Allowance.—In the present financial condition of the Railway, it is difficult to allow Dearness Allowance to the extent demanded by them but I feel that some Dearness Allowance should be granted to the workers. I would, therefore, allow Rs. 5 per head at a flat rate as a token Dearness Allowance to the workers. I hope when the financial condition of the Railway improves they will be able to give the Dearness Allowance in accordance with the recognised standards. So far as the pay scale is concerned, I have taken that into consideration in giving the above table.

ISSUE No. 4: *Bonus.*—Annual Bonus amounting to two months' pay should be granted to each employee just before the Durga Puja.

In view of the present financial condition of the Railway about which I have referred to in dealing with Issue No. 2, I think no bonus can be awarded at present.

ISSUE No. 5: *House Allowance.*—The Management should provide every employee with residential quarters and where no such quarters are made available to them, a monthly allowance of Rs. 5 should be granted.

As against this, the reply of the Company is that Station Masters are generally provided with free quarters and other wholetime members of the staff are given rent if they are living in rented houses. This statement we find in a reply by the Railway to the Charter of Demands of the employees. In the course of argument also it was stated that Station Masters are given free quarters and with regard to other employees, those who live in rented houses are given house rent and nothing is paid to those who are living in their own houses. No specific instance has been cited before this Tribunal to question the correctness of the Railway's statement. I would, therefore, leave the matter as it is and would not give any award as asked for by the Union on this issue.

ISSUE No. 6: *Provident Fund.*—Provident Fund scheme similar to the East Indian Railway should immediately be introduced with retrospective effect.

AND

ISSUE No. 7: *Gratuity.*—Every employee should be paid at the time of retirement a gratuity equal to one month's pay for every year of service.

Note : Those who are getting below the proposed minimum will start with the proposed minimum but those who are getting above the proposed minimum should be fitted into the scale proposed.

These two issues are taken up together.

The Union demands Provident Fund scheme similar to East Indian Railway and that it should be introduced with retrospective effect. About gratuity, they demand that at the time of retirement every worker should get a month's pay for every year of service as gratuity. The Railway says that they contributed 25 per cent. of the employees' subscription. This contribution has been stopped on account of the critical economic condition of the Railway. So far as the gratuity is concerned, they say that nothing is paid to any staff, but in some cases they paid a lump sum as help to some of the claimants and the maximum that they have paid in any case is Rs. 250. The contribution to the Provident Fund, I was told in the course of argument was stopped in the year 1934 by the Company. The employees are still subscribing to the Provident Fund. Provident Fund is useful inasmuch as it develops the habit of thrift amongst the workers and it also secures for them along with the contribution of the employer, an appreciable sum of money for their old age. Although it may be very desirable to have a Provident Fund but it will be a serious financial strain to the Railway to ask them to pay their contribution from the year when they stopped contributing. But I hope that when their financial condition improves they will introduce this system properly. I would leave the Provident Fund as it is without making any award as asked for by the Union.

But some provision must be made for retiring benefit to the workers. This award will be in force for one year and the Railway informs me that there may not be many cases of retirement during that year but in case there be instances of retirement either on account of old age or sudden incapacity, physical or mental, and if they are not being turned out of service on account of misconduct, some provision should be made for the workers in the shape of gratuity. I would, therefore, order that those who retire during the year when the award will be in force, should be paid half month's average pay for every year of their service, the maximum not to exceed 15 months. The average pay will be the pay drawn during the twelve months preceding retirement or death. In the case of death the amount should be paid to their legal heirs or nominees.

ISSUE No. 12: *Running Room.*—*Running room for rest should be made available to the drivers and guards.*

The Union claims running room for rest. As against this the Railway states that it is essential at Dhaniakhali and arrangement is being made to construct it before the end of the year. So far as Tarakeswar and Jamalpur are concerned, there are additional rooms there and the running staff use them for their rest. I am of opinion that no award is called for on this issue when the Railway is trying to construct an additional rest room at Dhaniakhali over and above the rest rooms available at Tarakeswar and Jamalpur.

In conclusion I beg to add that the real difficulty in this dispute has been to find a solution to the problem of securing proper living wages to the workers in the present financial condition of the Railway. I hope the Railway will be able to secure the loan from the Central Government they have asked for. With the co-operation of satisfied workers and strict management, I hope they will be able to tide over their present difficulties.

S. P. VARMA,
Chairman,

Central Industrial Tribunal.

CALCUTTA;

The 26th January, 1949.

APPENDIX 'A'

To

Sri S. P. Varma,

Central Industrial Tribunal at Calcutta.

IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN BENGAL PROVINCIAL RAILWAY CO. LTD. AND THEIR WORKMEN AS REPRESENTED BY THE BENGAL PROVINCIAL RAILWAY EMPLOYEES' UNION.

The humble petition of the Company and its employees

MOST RESPECTFULLY SHEWETH:

That the parties have agreed to the following terms, viz.:

- (a) *Re*: Issue No. 1.—The Company has agreed to recognise the above Union as representing the Workmen.
- (b) *Re*: Issue No. 9.—It is agreed that the duty hours of an employee shall not ordinarily exceed 48 hours a week.
- (c) *Re*: Issue No. 10.—It is agreed that the Company shall provide the employees with costumes to put on during duty hours.
- (d) *Re*: Issue No. 11.—The Company shall incorporate the service rules and conditions as prevailing in E. I. Railway in its rules and conditions.

Your petitioners, therefore, pray that the above terms may be incorporated in the Award to be made by the Tribunal in the above matter. And your petitioners as in duty bound shall ever pray.

(Sd.) H. K. SANYAL,

Advocate for the Workmen.

The 15th January, 1949.

(Sd.) N. DAS GUPTA,

Pleader for the Company.

TRUE COPY

S. P. VARMA,

Chairman,

Central Industrial Tribunal,

Calcutta.

H. KHANNA,

Deputy Secretary to the Government of India.